

REMARKS

Applicant has filed herewith a RCE, requesting entry of the Amendment filed on March 5, 2003. Per the March 5, 2003 Amendment, claims 1 and 3 through 14 are pending in the present application. The Examiner has acknowledged in the Advisory Action mailed on April 14, 2003 that the proposed amendment to claim 1 does overcome the §102 rejection applied in the previous office action. However, the Advisory Action does state that it cannot be agreed at this time that proposed claims 1, 13 and 14 are allowable because it appears that the closure of Whitehouse teaches the limitations set forth in the proposed claims. For at least the reasons set forth below, Applicant disagrees, and respectfully submits that the proposed claims are patentably distinguishable over Whitehouse. The claims recited below, reflect those proposed in the March 5, 2003 Amendment.

U.S. Patent No. 3,927,796 to Whitehouse discloses a closure, or as is clearly depicted in Figures 1-6, a dust cover, for a conventional pressurized aerosol container. To secure the dust cover to the container, two diametrically opposed lips extend radially inwardly from a lower edge portion of the closure to engage an annular slot on the container. A manually actuatable tab is provided for freeing the closure from the container. The tab is connected to the lower edge portion of the closure by a flexible hinge. To remove the dust cover from the container, downward movement of the tab is applied, which releases the diametrically opposed lips from the annular slot.

Claim 1 recites an easy open, reusable, removable closure apparatus for a container. The container has a terminal end having an orifice and a radially outwardly extending bead having an outer surface and a radially outwardly extending undercut. The closure apparatus has a cap portion having a top, a peripherally depending side wall comprising an inner surface that conforms to the bead outer surface and a radially inwardly extending peripheral lip that engages the bead undercut sealably securing the closure to the container. Material housed in the container is secured in the container by the cap portion. The cap portion has a handle depending

from the cap portion. The handle has a fulcrum portion that abuts an outer surface of the container neck.

Claim 13 recites a method of opening a container using the easy open, reusable, removable closure apparatus for a container having a terminal end having an orifice and a radially outwardly extending bead having an outer surface and a radially outwardly extending undercut. The reusable closure apparatus comprises a cap portion having a top, a peripherally depending side wall having a radially inwardly extending peripheral lip that engages the bead undercut sealably securing the closure to the container. Material housed in the container is secured in the container by the cap portion. The closure apparatus also comprises a handle depending from the cap portion. The handle further comprises an upper portion, a lower portion, and a fulcrum portion there between the upper and lower portions. The fulcrum portion abuts an outer surface of the container neck. The method comprises the steps of holding the container and the lower handle portion of the handle with at least one hand and depressing the lower handle portion toward the container until the peripheral lip disengages the bead undercut.

Claim 14 recites a method of reusing the easy open, reusable, removable closure apparatus for a container having a terminal end having an orifice and a radially outwardly extending bead having an outer surface and a radially outwardly extending undercut. The reusable closure apparatus comprises a cap portion having a top, a peripherally depending side wall having a radially inwardly extending peripheral lip that engages the bead undercut sealably securing the closure to the container. Material housed in the container is secured in the container by the cap portion. The reusable closure also comprises a handle depending from the cap portion. The handle further comprises an upper portion, a lower portion, and a fulcrum portion there between the upper and lower portions. The fulcrum portion abuts an outer surface of the container neck. The method of reusing the reusable closure apparatus comprises the steps of providing a container and pressing the cap portion of the easy open, reusable closure apparatus firmly down over the bead until the peripheral lip engages the bead undercut.

It is respectfully submitted that Whitehouse fails to remotely disclose a closure apparatus that sealably secures a material housed in a container, as recited in claims 1, 13

and 14. To the contrary, Whitehouse clearly discloses that his invention is only a closure for a conventional pressurized aerosol container (col. 2, lines 17-26), which does not have an open top where the contents can easily spill out. Referring to Figs. 1 through 6, it is clear that the closure of Whitehouse is a dust cover. In fact, the contents of the Whitehouse container never come in contact with the closure, therefore the closure never functions to secure the contents in the container, unlike the claimed invention. To the contrary, the food topping or other material contained in Whitehouse's invention is secured within the container by a separate valve under the container's dispensing "sleeve" (col. 2, lines 21-27). It is respectfully asserted that if the contents were in contact with Whitehouse's closure, the contents would leak out under the bottom edge of the closure adjacent to the container's rim, which is designated by Whitehouse as 20. Clearly, the closure cannot, nor is it intended to, provide a material or fluid-tight seal, to secure the contents in the container, as in the presently claimed invention.

It is respectfully submitted that not only is the design of the closure not capable of securing such contents, the closure does not possess the strength or structure necessary to hold the closure on top of the container sufficient to restrain the contents inside. Certainly, the containment of a pressurized material in contact with Whitehouse's closure (dust cover) would be impossible, which is contrary to the claimed invention, which is designed to secure materials, such as pressurized contents, in the container (specification, page 4, lines 24-25 and page 5, lines 29-32). The only mechanism securing the Whitehouse closure to the container is two diametrically opposed lips. To the contrary, the claimed invention includes a radially inwardly extending **peripheral** lip, to sealably secure the closure apparatus to the container.

Another important distinction between Whitehouse's closure and the claimed closure apparatus is their respective methods of operation. Whitehouse's closure employs a standard inverse pressure sequence. Descending pressure on tab 34 in a southerly direction causes the closure to move 180 degrees in an opposite, northerly direction. In contrast to this movement, pressure on the handle lower portion of the claimed closure apparatus in a lateral direction toward the side of the container causes the

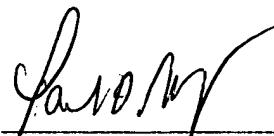
cap portion to move 90 degrees upward in a northerly direction. To redirect an applied force back toward the source is simple, as in Whitehouse. To redirect such force in a 90-degree direction away from the force is significantly more complex, as in the presently claimed invention. Clearly, Whitehouse fails to anticipate this method of operation, as recited in claim 13.

Furthermore, the fundamental operating mechanism is different between Whitehouse's closure and the claimed closure apparatus. Whitehouse describes the movement of tab 34 as having the effect of pushing the dust cover up, in a hinge-like manner (col. 3, lines 27-59). The principle of the closure apparatus of the present invention is not a hinge, but a lever over a fulcrum. This is an important distinction and defines the fundamental principle that causes each system to operate. Clearly, Whitehouse fails to anticipate this mechanism, as recited in claim 13.

In summary, the claimed closure apparatus is strong and stable and does not experience permanent deformation or destruction during use. Its operation is single handed with only one lever stroke for complete effect. Most notably, its function serves as a genuine materials barrier with a fluid-tight seal against an open orifice, and its integrity on reuse is equal to its pre-removal condition. Whitehouse's fails to disclose or remotely suggest such a container closure.

Therefore, it is respectfully submitted that Whitehouse fails to anticipate or suggest the invention recited in claims 1 and 3 through 14. As such, Applicant respectfully requests passage of this application to allowance.

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